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TELEPHONE 201-343-0970
TELECOPIER 201-343-5882

October 4, 2010

VIA ECF

Honorable Roanne Mann
United States Magistrate Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

RE: *In the Matter of the Petition of North East Marine Inc. as Owners
Of the Tug ELENA, a 35' Deck Barge and a 40' Deck Barge
For Exoneration From and Limitation of Liability
United States District Court – Eastern District of New York
Case No.: CV-09-5600 (Amon, J) (Mann, M.J.)
Our File No.: 10000530 DRH/GSR*

Dear Judge Mann:

This firm represents the Plaintiff in Limitation North East Marine, Inc. in the above-captioned case pending in the United States District Court for the Eastern District of New York.

On September 28, 2010, North East Marine, Inc. noticed the deposition of the Claimant Robert Boody for Friday October 8, 2010. (A copy of the Notice of Deposition is attached hereto.) On September 29, 2010, counsel for the Claimant Robert Boody advised that they would not produce Robert Boody for a deposition on October 8th on the grounds that there was a pre-motion conference scheduled before Judge Amon scheduled on October 20, 2010. (A copy of Elizabeth Blair Starkey, Esq.'s letter dated September 29, 2010 is attached hereto.) On September 30, 2010, we responded to counsel for Robert Boody advising that there was no Order staying discovery and/or any other legitimate basis for not producing their client for a deposition as notice. (Copy attached) We have also attempted to resolve this matter through a telephone conversation with counsel for Robert Boody who continues to refuse to produce their client for a deposition on October 8, 2010.

October 4, 2010

Page 2

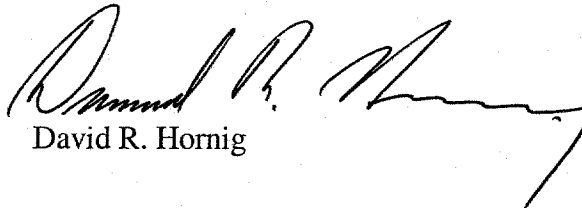
On September 13, 2010, the Court entered an Order by endorsements extending the parties' time to complete discovery to November 20, 2010. There has been no further Order staying discovery or otherwise precluding any party from conducting any and all discovery permitted under the Federal Rules of Civil Procedure. The Plaintiff in Limitation would be severely prejudiced if they were precluded from conducting any discovery including but not limited to the deposition of the Claimant Robert Boody until the issue concerning the lifting of the stay is resolved by the district court. Ultimate resolution of the issue of whether the automatic stay should be lifted may not be resolved until after the date that all discovery is required to be completed in this case. Furthermore, there is no harm to the Claimant Robert Boody to appearing for a deposition since his testimony in the federal action could be used in the state court action, assuming that the stay enjoining the action filed in the state court was lifted by the district court.

Lastly, there is no justifiable basis on which a party can unilaterally refuse to produce a witness properly noticed for a deposition without first seeking and obtaining an Order from the Court staying discovering. The Plaintiff in Limitation respectfully requests that an Order be entered directing Robert Boody to appear for a deposition as noticed by the Plaintiff in Limitation on October 8, 2010.

Respectfully submitted,

NICOLETTI HORNIG & SWEENEY

By:



David R. Hornig

DRH/mar
Attachments

cc: (w/attachments)

VIA ECF

HOFMANN & ASSOCIATES
Attorneys for Claimant
ROBERT BOODY
360 West 31st Street, Suite 1506
New York, New York 10001-2727
Tel. No.: (212) 465-8840

Attention: Elizabeth Blair Starkey, Esq.

October 4, 2010

Page 3

PILLINGER MILLER TARALLO, LLP

Attorneys for Claimant

EL SOL CONTRACTING and

CONSTRUCTION CORPORATION

570 Taxter Road, Suite 275

Elmsford, New York 10523

Tel. No.: (914) 703-6300

File No.: LIB-00105/JTM

Attention: Jeffrey T. Miller, Esq.

RUBIN, FIORELLA & FRIEDMANN LLP

Attorneys for Claimant

METRO MARINE SALES, INC.

292 Madison Avenue, 11th Floor

New York, New York 10017

File No.: 431-14563

Attention: Brendan Burke, Esq.

HERZFELD & RUBIN, P.C.

Attorneys for Claimant

FRANCOIS GUILLET

125 Broad Street

New York, New York 10004

Attention: James Donat, Esq.

NICOLETTI HORNIG & SWEENEY
Wall Street Plaza, 7th Floor
New York, New York 10005-1801
(212) 220-3830
Attorneys for Petitioner
NORTH EAST MARINE, INC.
Our File No.: 10000530 DRH/GSR

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE PETITION OF
NORTH EAST MARINE, INC., AS OWNER OF
THE TUG ELENA, A 35' DECK BARGE AND A
40' DECK BARGE, FOR EXONERATION
FROM AND LIMITATION OF LIABILITY

09-CV-5600 (CBA)(RLM)

NOTICE OF DEPOSITION

S I R S :

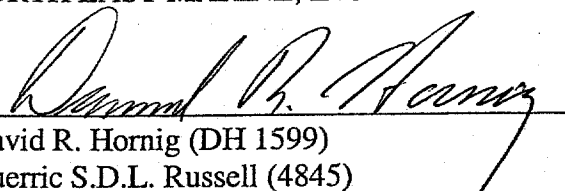
PLEASE TAKE NOTICE that the PLAINTIFF IN LIMITATION, NORTHEAST MARINE, INC. will take the deposition of the Claimant, ROBERT BOODY at the offices of NICOLETTI HORNIG & SWEENEY, Wall Street Plaza, 88 Pine Street, 7th Floor, New York, New York 10005 on the 8th day of October, 2010 at 10:00 a.m. and continuing from day-to-day thereafter until completed.

PLEASE TAKE FURTHER NOTICE that said Claimant, ROBERTY BOODY is to produce at the same time and place all materials, documents and other items denoted on the attached schedule of documents to be produced.

Dated: New York, New York
September 27, 2010

NICOLETTI HORNIG & SWEENEY
Attorneys for Petitioner
NORTH EAST MARINE, INC.

By:


David R. Hornig (DH 1599)
Guerric S.D.L. Russell (4845)

Wall Street Plaza
88 Pine Street, 7th Floor
New York, New York 10005-1801
Telephone No.: (212) 220-3830
Facsimile No.: (212) 220-3780
E-Mail: dhornig@nicolettihornig.com
(FILE NO.: 10000530 DRH/GSR)

TO: (via facsimile and regular mail)

HOFMANN & SCHWEITZER
Attorneys for Claimant
ROBERT BOODY
360 West 31st Street, Suite 1506
New York, New York 10001-2727
Tel. No.: (212) 465-8840
Facsimile: (212) 465-8849

Attention: Elizabeth Blair Starkey, Esq.

PILLINGER MILLER TARALLO, LLP
Attorneys for Claimant
EL SOL CONTRACTING and
CONSTRUCTION CORPORATION
570 Taxter Road, Suite 275
Elmsford, New York 10523
Tel. No.: (914) 703-6300
File No.: LIB-00105/JTM
Facsimile: (914) 703-6688

Attention: Jeffrey T. Miller, Esq.

RUBIN, FIORELLA & FRIEDMANN LLP

Attorneys for Claimant

METRO MARINE SALES, INC.

292 Madison Avenue, 11th Floor

New York, New York 10017

File No.: 431-14563

Facsimile: (212) 953-2462

Attention: Brendan Burke, Esq.

HERZFELD & RUBIN, P.C.

Attorneys for Claimant

FRANCOIS GUILLET

125 Broad Street

New York, New York 10004

Facsimile: (212) 344-3333

Attention: James Donat, Esq.

SCHEDULE A – DOCUMENTS TO BE PRODUCED

1. Robert Boody's Federal and State Income Tax Returns for calendar years 2006, 2007, 2008 and 2009.
2. All accident reports prepared by Robert Boody.
3. Accident reports prepared by Carabie Corporation that concern or relate to Robert Boody's accident on January 29, 2008.
4. Any photographs of the location where the accident on January 29, 2008 occurred.
5. All medical reports concerning the treatment received by Robert Boody for the accident that occurred on January 29, 2008, excluding those produced as part of Robert Boody's Rule 26 Disclosure.
6. Statement of any person who claims to have witnessed the occurrence of the accident on January 29, 2008.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

SALMA ABDALLAH, being duly sworn, deposes and says:

1. I am employed by the firm of NICOLETTI HORNIG & SWEENEY, attorneys for Plaintiff in Limitation Northeast Marine, Inc. I am not a party to this action, am over 18 years of age, and reside in Brooklyn, New York.

2. On September 28, 2010, I served the annexed **Notice of Deposition** upon the following:

HOFMANN & SCHWEITZER
Attorneys for Claimant
ROBERT BOODY
360 West 31st Street, Suite 1506
New York, New York 10001-2727
Tel. No.: (212) 465-8840
Facsimile: (212) 465-8849

Attention: Elizabeth Blair Starkey, Esq.

PILLINGER MILLER TARALLO, LLP
Attorneys for Claimant
EL SOL CONTRACTING and
CONSTRUCTION CORPORATION
570 Taxter Road, Suite 275
Elmsford, New York 10523
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Attention: Jeffrey T. Miller, Esq.

RUBIN, FIORELLA & FRIEDMANN LLP
Attorneys for Claimant
METRO MARINE SALES, INC.
292 Madison Avenue, 11th Floor
New York, New York 10017
File No.: 431-14563
Facsimile: (212) 953-2462


Attention: Brendan Burke, Esq.

HERZFELD & RUBIN, P.C.
Attorneys for Claimant
FRANCOIS GUILLET
125 Broad Street
New York, New York 10004
Facsimile: (212) 344-3333

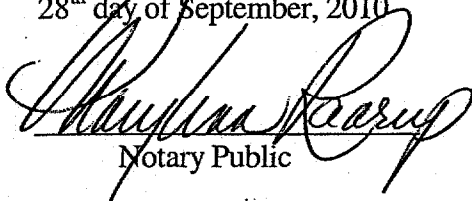
Attention: James Donat, Esq.

at the address(es) designated by said attorney(s) for that purpose, by depositing true copy(ies) of same enclosed in postpaid, properly addressed wrapper(s) in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

3. The aforementioned documents were also delivered via facsimile by transmitting a copy of the papers to the said attorneys at the indicated facsimile telephone number(s) designated by the attorney(s) for that purpose.


SALMA ABDALLAH

Sworn to before me this
28th day of September, 2010


Notary Public

MARY ANN RAARUP
Notary Public, State of New York
No. 01RA4874099
Qualified in Suffolk County
Certificate filed in New York County
Commission Expires Oct. 20, 2012

* * * COMMUNICATION RESULT REPORT (SEP. 27. 2010 5:12PM) * * *

FAX HEADER 1: NICOLETTI HORNIG & SWEENEY
FAX HEADER 2: 212-825-1865TRANSMITTED/STORED : SEP. 27. 2010 5:08PM
FILE MODE OPTION

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		212 344 3333	OK	5/5

REASON FOR ERROR
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E-MAIL GENERAL@NICOLETTIHORNIG.COM

FACSIMILE TRANSMITTAL SHEET

TO: SEE BELOW	FROM: David R. Hornig, Esq.
COMPANY: SEE BELOW	DATE: SEPTEMBER 27, 2010
FAX NUMBER: SEE BELOW	TOTAL NO. OF PAGES INCLUDING COVER: 5
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: 10000530 DRH/GSR
RE:	YOUR REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ COMMENT ☐ REPLY ☐ NO ORIGINAL TO FOLLOW

TO:

VIA FACSIMILE (212) 465-8849
HOFMANN & SCHWEITZER
360 West 31st Street, Suite 1506
New York, New York 10001-2727

Attention: James Fitzsimons, Esq.

VIA FACSIMILE (212) 953-2462
RUBIN, FIORELLA & FRIEDMAN
292 Madison Avenue, 11th Floor
New York, New York 10017
Attention: Brendan Burke, Esq.
Your File No.: 431-14563

VIA FACSIMILE (914) 703-6688
PILLINGER MILLER TARALLO, LLP
570 Taxter Road, Suite 275
Elmsford, New York 10523
Attention: Jeffrey T. Miller, Esq.
Your File No.: LIB-00105/JTM

VIA FACSIMILE (212) 344-3333
HERZFELD & RUBIN, P.C.
Attorneys for Claimant
FRANCOIS GUILLET
125 Broad Street
New York, New York 10004
Attention: James Donat, Esq.

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HOFMANN & SCHWEITZER

COUNSELLORS AT LAW AND PROCTORS IN ADMIRALTY

1-530

PAUL T. HOFMANN*
TIMOTHY F. SCHWEITZER*

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September 29, 2010

By Telefax: 212-220-3780

David R. Hornig, Esq.
Nicoletti Hornig & Sweeney
88 Pine Street, 7th Floor
New York, NY 10005

Re: In the Matter of the Petition of North East Marine, Inc.
EDNY: CV-09-5600

Dear David:

I am in receipt of the notice to depose Robert Boody which you served on Sept. 27, 2010.

Please be advised, in light of the upcoming pre-motion conference before Judge Amon on October 20 and the anticipated motion practice which hopefully will follow, we respectfully decline to produce Mr. Boody on October 8 in response to your notice. If you wish, the matter can be discussed at the conference.

Very truly yours,
HOFMANN & SCHWEITZER

By: Elizabeth Blair Starkey
Elizabeth Blair Starkey

EBS/
cc: Pillinger Miller Tarallo, LLP
Attorneys for El Sol
Rubin, Fiorella & Friedmann, LLP
Attorneys for Metro Marine Sales, Inc.

Nicoletti Hornig & Sweeney

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Δ ALSO ADMITTED IN MARYLAND

September 30, 2010

VIA FACSIMILE (212) 465-8849

Elizabeth Blair Starkey, Esq.
HOFMANN & SCHWEITZER
360 West 31st Street, Suite 1506
New York, New York 10001-2727

RE: *In the Matter of the Petition of North East Marine, Inc., As
Owner of the Tug ELÉNA, a 35' Deck Barge and a 40'
Deck Barge, For Exoneration from and Limitation of Liability*
United States District Court – Eastern District of New York
Case No.: 09 Civ. 5600 (Amon, J.)(Mann, M.J.)
Your File No.: 08-22
Our File: 10000530 DRH/GSR

Dear Ms. Starkey:

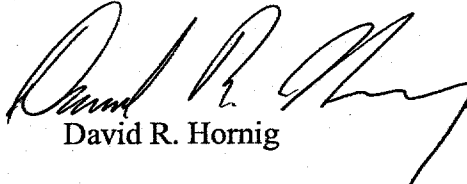
I am in receipt of your letter dated September 29, 2010. There has been no Order staying discovery in this action and therefore, you have no legitimate basis on refusing to produce Robert Boody for a deposition on October 8, 2010.

Kindly accept this letter as our good faith attempt to resolve this matter. Unless you advise us by the close of business today that you have reconsidered your position, we will have no alternative but to seek court intervention.

Very truly yours,

NICOLETTI HORNIG & SWEENEY

By:


David R. Hornig

DRH/lr

September 30, 2010

Page 2

cc:

VIA FACSIMILE (914) 703-6688

PILLINGER MILLER TARALLO, LLP

Attorneys for El Sol

570 Taxter Road, Suite 275

Elmsford, New York 10523

Tel. No.: 914-703-6300

Attention: Jeffrey T. Miller, Esq.

File No.: LIB-00105/JTM

VIA FACSIMILE (212) 953-2462

RUBIN, FIORELLA & FRIEDMAN

Attorneys for Metro Marine

292 Madison Avenue, 11th Floor

New York, New York 10017

Tel. No.: 212-953-2381

Attention: Brendan M. Burke, Esq.

File No.: 431-14563

VIA FACSIMILE (212) 344-3333

HERZFELD & RUBIN, P.C.

Attorneys for Claimant

FRANCOIS GUILLET

125 Broad Street

New York, New York 10004

Attention: James Donat, Esq.

* * * COMMUNICATION RESULT REPORT (SEP. 30. 2010 12:39PM) * * *

FAX HEADER 1: NICOLETTI HORNIG & SWEENEY
FAX HEADER 2: 212-825-1865TRANSMITTED/STORED : SEP. 30. 2010 12:24PM
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		212 344 3333	OK	3/3

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NICOLETTI HORNIG & SWEENEY
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SEE BELOW	David R. Hornig, Esq.
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TO:

VIA FACSIMILE (212) 465-8849
HOFMANN & SCHWEITZER
 360 West 31st Street, Suite 1506
 New York, New York 10001-2727

Attention: Elizabeth Blair Starkey, Esq.

VIA FACSIMILE (212) 953-2462
RUBIN, FIORELLA & FRIEDMAN
 292 Madison Avenue, 11th Floor
 New York, New York 10017

Attention: Brendan Burke, Esq.
Your File No.: 431-14563

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 Attorneys for Claimant
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* * * COMMUNICATION RESULT REPORT (SEP. 30. 2010 12:57PM) * * *

FAX HEADER 1: NICOLETTI HORNIG & SWEENEY
FAX HEADER 2: 212-825-1865TRANSMITTED/STORED : SEP. 30. 2010 12:56PM
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FACSIMILE TRANSMITTAL SHEETTO:
SEE BELOWFROM:
David R. Hornig, Esq.COMPANY:
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PHONE NUMBER:

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New York, New York 10001-2727

Attention: Elizabeth Blair Starkey, Esq.

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HOFMANN & SCHWEITZER

COUNSELLORS AT LAW AND PROCTORS IN ADMIRALTY

PAUL T. HOFMANN*
TIMOTHY F. SCHWEITZER*

DARIO ANTHONY CHINIGO*
JAMES G. FITZSIMONS
ELIZABETH BLAIR STARKEY
JESSICA JUSTE*
*ALSO ADMITTED IN NJ

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(908) 393-5662

By ECF and REGULAR MAIL

Honorable Roanne L. Mann
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: In the Matter of the Petition of North East Marine, Inc.
EDNY: CV-09-5600

Dear Judge Mann:

Our office represents the Claimant Robert Boody in this limitation of liability litigation which has been referred to your Honor by Hon. Carol Amon. An initial conference was held on May 3, 2010 at which certain discovery dates were set. I enclose a copy of the discovery order.

I am writing with the consent of all claimants herein and the petitioner to request a 90-day extension of the discovery schedule.

All parties have submitted automatic disclosure as required by Rule 26. Formal document disclosure and depositions have not taken place.

However, among the maritime claimants, there have been substantive discussions concerning which of them is/are proper parties in this case. As a result of those discussions, there is a strong possibility that certain of them will no longer be part of the case, based on affidavits and documents exchanged among the parties.

In the meantime, I have written to Judge Amon to request a pre-motion conference for the purpose of filing a motion to stay the instant action and permit Mr. Boody to return to Queens County to litigate his personal injury claim, while stipulating to protect the petitioner's right to limit his liability in this action. A copy of that letter is enclosed.

*Application
granted, on consent.
Each of the deadlines
contained in the
Court's Calendar Order
September 13, 2010
of May 3, 2010 is extended
by 90 days, on consent.
The 11/10/10 settlement
conference is adjourned
to 2/7/11 at 9:30 a.m.*

SO ORDERED:

/s/

Roanne L. Mann
U.S. Magistrate Judge
Dated: 9/13/10

HOFMANN & SCHWEITZER

Page 2

Hon. Roanne L. Mann

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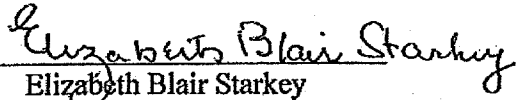
September 13, 2010

Therefore, on behalf of the litigants herein, I respectfully request a 90 day extension of all discovery deadlines.

Respectfully submitted,

HOFMANN & SCHWEITZER

By:


Elizabeth Blair Starkey

Enc.

cc: BY ECF and BY REGULAR MAIL

Hon. Carol Amon

Nicoletti Hornig & Sweeney

David R. Hornig, Esq.

Attorneys for North East Marine

Pillinger Miller Tarallo, LLP

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Rubin, Fiorella & Friedmann, LLP

Brendan Burke, Esq.

Attorneys for Metro Marine Sales, Inc.

Metro Marine and Francois Guillet

ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

DATE: 5/03/10
START: 12:30 p.m.
END: 1:00 pm

DOCKET NO: 09-CV-5600 (CBA)

CASE: North East Marine, Inc., et al. v. Boody, et al.

☒ INITIAL CONFERENCE
☐ DISCOVERY CONFERENCE
☐ SETTLEMENT CONFERENCE

☐ OTHER/ORDER TO SHOW CAUSE
☐ FINAL/PRETRIAL CONFERENCE
☐ TELEPHONE CONFERENCE

FOR PLAINTIFF:

Val Wamser

d Et SOL

Michael Burke

FOR DEFENDANT:

Boody

James Fitzsimmons

Delta Metro

Brendan Burke

FACT Delta Gillet

Joseph Donat

DISCOVERY TO BE COMPLETED BY

8/20/10

☒ NEXT Sett CONFERENCE SCHEDULED FOR

11/10/10 9:30 am

JOINT PRE-TRIAL ORDER TO BE FILED VIA ECF BY

PL. TO SERVE DEF. BY:

DEF. TO SERVE PL. BY:

RULINGS: PLEASE TYPE THE FOLLOWING ON DOCKET SHEET

Automatic disclosure shall be completed by 5/18/10.

Boody's expert disclosure shall be served by 9/30/10; the remaining parties' expert disclosure shall be served by 10/29/10. Expert depositions are deferred until after the settlement conference.

Pleadings may be amended & new parties added until 5/28/10.